

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In The Matter of an *Ex Parte* Petition for  
Judicial Assistance Pursuant to U.S.C.  
§ 1782, by

CPC Patent Technologies PTY Ltd.,

Petitioner

In support of legal proceedings in the  
Federal Republic of Germany

Case No. 5:21-mc-80091-JST

STIPULATED PROTECTIVE ORDER  
FOR LITIGATION INVOLVING  
PATENTS, HIGHLY SENSITIVE  
CONFIDENTIAL INFORMATION  
AND/OR TRADE SECRETS

WHEREAS Apple, Inc. is expected, in response to CPC Patent Technologies PTY Ltd.'s discovery requests in the above-captioned action, to produce certain documents that may constitute trade secrets and/or other confidential research, development, business, or commercial information within the meaning of Federal Rule of Civil Procedure 26(c)(1)(G) for which special protection from public disclosure and from use for any purpose other than in this action is warranted;

WHEREAS, the Parties have already entered into a protective order of the Western District of Texas;

WHEREAS, the Parties to this action seek to establish a mechanism specific to this action to protect information produced by Apple, Inc. from improper disclosure;

WHEREAS, the Parties agree that steps should be taken to allow certain data and information to be produced in Germany and in compliance with US and EU law and other applicable data protection laws and provisions;

NOW THEREFORE, the Parties HEREBY STIPULATE to the entry of this Protective Order regarding discovery in this action.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

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2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation and the German Proceedings who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action or the German Proceedings, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

2.8 German Proceedings: The proceedings to be initiated by Petitioner CPC Patent Technologies PTY Ltd. (“Petitioner”) in Germany for patent infringement against Respondent’s related entity, which at this time has been identified as Apple Retail Germany B.V. & Co. KG.

2.9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.10 House Counsel: attorneys who are employees of a party to this action. House

Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action or the German Proceedings but are retained to represent or advise a party to this action or the German Proceedings and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.13 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.15 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.16 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public

record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation and the German Proceedings, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action and the German Proceedings, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action and the German Proceedings, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is

1 withdrawing the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
3 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

4 Disclosure or Discovery

5 Material that qualifies for protection under this Order must be clearly so designated before  
6 the material is disclosed or produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic documents), that the  
9 Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
10 ATTORNEYS’ EYES ONLY” to each page that contains protected material. If only a portion or  
11 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
12 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must  
13 specify, for each portion, the level of protection being asserted.

14 A Party or Non-Party that makes original documents or materials available for inspection  
15 need not designate them for protection until after the inspecting Party has indicated which material  
16 it would like copied and produced. During the inspection and before the designation, all of the  
17 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
18 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
19 copied and produced, the Producing Party must determine which documents, or portions thereof,  
20 qualify for protection under this Order. Then, before producing the specified documents, the  
21 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains Protected Material.  
23 If only a portion or portions of the material on a page qualifies for protection, the Producing Party  
24 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
25 margins) and must specify, for each portion, the level of protection being asserted.

26 Parties shall give the other parties notice if they reasonably expect a hearing or other  
27 proceeding to include Protected Material so that the other parties can ensure that only authorized  
28 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are

present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(b) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
2 original designation is disclosed.

3       6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
4 process by providing written notice of each designation it is challenging and describing the basis  
5 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
6 notice must recite that the challenge to confidentiality is being made in accordance with this  
7 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
8 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
9 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
10 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
11 designation was not proper and must give the Designating Party an opportunity to review the  
12 designated material, to reconsider the circumstances, and, if no change in designation is offered, to  
13 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of  
14 the challenge process only if it has engaged in this meet and confer process first or establishes that  
15 the Designating Party is unwilling to participate in the meet and confer process in a timely  
16 manner.

17       6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
18 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
19 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of  
20 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
21 process will not resolve their dispute, whichever is earlier. Each such motion must be  
22 accompanied by a competent declaration affirming that the movant has complied with the meet  
23 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
24 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
25 shall automatically waive the confidentiality designation for each challenged designation. In  
26 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
27 time if there is good cause for doing so, including a challenge to the designation of a deposition  
28 transcript or any portions thereof. Any motion brought pursuant to this provision must be



accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

#### 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, appealing, or attempting to settle this litigation or the German Proceedings. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When this litigation and German Proceedings have been terminated (whichever is later), a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court in this litigation or the German Proceedings or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action or the German Proceedings, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation or the German Proceedings and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving

1 Party to whom disclosure is reasonably necessary for this litigation or the German Proceedings  
2 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
4 reasonably necessary for this litigation or the German Proceedings and who have signed the  
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel in this litigation or the German Proceedings;

7 (e) court reporters and their staff, professional trial consultants, and Professional Vendors  
8 to whom disclosure is reasonably necessary for this litigation or the German Proceedings and who  
9 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (f) during their testimony in the German Proceedings, witnesses in the action to whom  
11 disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to  
12 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
13 court in this litigation or the German Proceedings. Pages of transcribed testimony or exhibits to  
14 depositions that reveal Protected Material must be separately bound by the court reporter and may  
15 not be disclosed to anyone except as permitted under this Stipulated Protective Order.

16 (g) the author or recipient of a document containing the information or a custodian or other  
17 person who otherwise possessed or knew the information.

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
19 Information or Items. Unless otherwise ordered by the court in this litigation or the German  
20 Proceedings or permitted in writing by the Designating Party, a Receiving Party may disclose any  
21 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
22 only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action or the German  
24 Proceedings, as well as employees of said Outside Counsel of Record to whom it is reasonably  
25 necessary to disclose the information for this litigation or the German Proceedings and who have  
26 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

27 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
28 litigation or the German Proceedings, (2) who have signed the “Acknowledgment and Agreement

to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

(c) the court and its personnel in this litigation or the German Proceedings;

(d) court reporters and their staff, professional trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation or the German Proceedings and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may become involved, in any competitive decision-making.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a

litigation, at any time during the preceding five years, and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

#### 8. PROSECUTION BAR

Absent written consent from the Producing Party, any individual who receives access to

“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information shall not be involved in the prosecution of patents or patent applications relating to the functionality, operation, and design of biometric security and/or biometric access technology, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information is first received by the affected individual and shall end two (2) years after final termination of this action.

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the

1 court from which the subpoena or order issued, unless the Party has obtained the Designating  
2 Party's permission. The Designating Party shall bear the burden and expense of seeking protection  
3 in that court of its confidential material – and nothing in these provisions should be construed as  
4 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
5 another court.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
8 Material to any person or in any circumstance not authorized under this Stipulated Protective  
9 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
10 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected  
11 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
12 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and  
13 Agreement to Be Bound” that is attached hereto as Exhibit A.

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
15 MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
17 produced material is subject to a claim of privilege or other protection, the obligations of the  
18 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
19 provision is not intended to modify whatever procedure may be established in an e-discovery order  
20 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence  
21 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
22 communication or information covered by the attorney-client privilege or work product protection,  
23 the parties may incorporate their agreement in the stipulated protective order submitted to the  
24 court.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
27 seek its modification by the court in the future.

28 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective

Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Export Control. Protected Material may be used for purposes of preparing, litigating, and resolving this litigation and the German Proceedings and, thus, may be accessed only by individuals in Germany defined above in sections 7.2 and 7.3 solely for those purposes, except where prohibited by United States Export Administration Regulations. Disclosure of Protected Material shall be subject to all applicable laws and regulations relating to the export of technical data contained in such Protected Material, including the release of such technical data to foreign persons or nationals in the United States or elsewhere. The Producing Party shall be responsible for identifying any such controlled technical data, and the Receiving Party shall take measures necessary to ensure compliance. Specifically, any Protected Material that is governed by United States Export Administration Regulations must be clearly marked as such in bold and capitalized text “SUBJECT TO ITAR/EAR – ACCESS LIMITED TO ONLY U.S. CITIZENS LOCATED IN U.S.” and the production of which shall be accompanied by an email that clearly identifies the production by bates number of such protected material. If a party disputes the designation of material under this provision, it shall raise such dispute under the dispute resolution procedures set forth for challenging other designations, which are set forth in this Order and in the Local Rules for the Northern District of California.

12.4 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected



1 Material under seal pursuant to Civil Local Rule 79-5 is denied by the court, then the Receiving  
 2 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5 unless  
 3 otherwise instructed by the court.

4 12.5 Source Code Addendum. If source code becomes subject to production in this  
 5 action and the German Proceedings, the parties will negotiate a separate source code addendum to  
 6 this Protective Order.

7 13. FINAL DISPOSITION

8 Within 60 days after the final disposition of this action and the German Proceedings  
 9 (whichever is later), as defined in paragraph 4, each Receiving Party must return all Protected  
 10 Material to the Producing Party or destroy such material. As used in this subdivision, “all  
 11 Protected Material” includes all copies, abstracts, compilations, summaries, and any other format  
 12 reproducing or capturing any of the Protected Material. Whether the Protected Material is returned  
 13 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and,  
 14 if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies  
 15 (by category, where appropriate) all the Protected Material that was returned or destroyed and (2)  
 16 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or  
 17 any other format reproducing or capturing any of the Protected Material. Notwithstanding this  
 18 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,  
 19 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial  
 20 exhibits, expert reports, attorney work product, and consultant and expert work product, even if  
 21 such materials contain Protected Material. Any such archival copies that contain or constitute  
 22 Protected Material remain subject to this Protective Order as set forth in Section 4. In the event  
 23 that the German Proceedings are not commenced within twelve (12) months of the resolution of  
 24 this action, Petitioner will notify Respondent Apple Inc. (“Respondent”) and request instructions  
 25 as to whether to destroy all Protected Material or return all Protected Material to Respondent.  
 26 Once Petitioner receives a response to this request from Respondent, Petitioner will take the  
 27 requested action and confirm it has been completed with fourteen (14) business days.  
 28



IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Pursuant to Local Rule 5-1(h)(3), I, Zachary T. Timm, attest that the other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

DATED: July 6, 2022

/s/ Zachary Tim

Christina Goodrich

George Summerfield

Zachary Timm

K&L Gates LLP

Attorneys for Petitioner, CPC Technologies PTY Ltd.

DATED: July 6, 2022

/s/ Anthony Van Nguyen

Seth Sproul

Anthony Van Nguyen

Fish & Richardson P.C.

Attorneys for Respondent, Apple Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Honorable Nathanael M. Cousins

United States District/Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read  
 in its entirety and understand the Stipulated Protective Order that was issued by the United States  
 District Court for the Northern District of California on [date] in the case of In the Matter of an *Ex*  
*Parte* Petition for Judicial Assistance, Case No. 5:21-mc-80091-JST. I agree to comply with and  
 to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge  
 that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
 solemnly promise that I will not disclose in any manner any information or item that is subject to  
 this Stipulated Protective Order to any person or entity except in strict compliance with the  
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Northern District of California for the purpose of enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone number]  
 as my California agent for service of process in connection with this action or any proceedings  
 related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
 [printed name]

Signature: \_\_\_\_\_  
 [signature]